IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.922 OF 2005
IN
SUIT NO.921 OF 2005

Sardar Griha Co-operative
Housing Society Limited ... Plaintiffs

versus

Roopam Fashion Private Ltd.
and others ... Defendants

Mr.J.Dwarkadas i/by S.Ashwinkumar & Co. for the plaintiff.

Mr.D.D.Madon for defendant nos.1 to 4.

Mr.K.N.Gaikwad for BMC..

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th July 2005

PC :

1. "Sardar Gruha" is not just a structure or a building for the residents of Mumbai. Lokmanya Bal Gangadhar Tilak once stayed in this building and the said building is known through out Mumbai and else where as his residence. Unfortunately, today, the occupants of the building have forgotten the great man and his legacy. A cloth shop owner and co-operative housing society of the tenants/occupants are locked in litigation

which also involves BMC (Brihan Mumbai Mahanagarpalika). Defendant no.6 Municipal Corporation of Greater Mumbai put up the building for auction and thereafter purported to convey it to both, plaintiff and defendant nos.1 to 5. The controversy in the suit is that the co-operative housing society claims that pursuant to the auction it is the sole purchaser and that the arrangement between defendant no.1 as well as others was not to partake the character of co-ownership of the property. This issue will have to be resolved finally only at the trial. Today, there is no conveyance of the building either in favour of plaintiffs or defendants 1 to 4.

2. The proper course, according to me, is to have a Court Receiver appointed of the entire building and preventing both, plaintiffs as well as defendants 1 to 5 from dealing with the same in any manner. That would ensure not only proper maintenance of building as well as regular payment of taxes but allegations and counter allegations of misuse of the property and grabbing of the same to the detriment of each other.

3. Mr.Dwarkadas, learned senior counsel for the plaintiffs and Mr.Madon for defendants 1 to 5 agree that a Court Receiver should be appointed of the entire building. But the submission of Mr.Madon is that parties be prevented from either transferring tenancies or accepting surrenders as well as monies in consideration thereof. He also submits that the Court Receiver should be put in-charge of the entire property with powers to collect rents/compensation. Despite this agreement at the initial stage, Mr.Madon chose to argue the matter after it was adjourned I have to give only brief reasons for my conclusion that it is just and convenient to appoint a Court Receiver in respect of the property in question.

4. The suit is filed for a declaration that the plaintiffs are owners in respect of the property more particularly described at Exhibit-B. The plaintiff also claim a declaration that a memorandum of understanding dated 20th September 2001 being Exhibit-G to the plaint is illegal, void and not binding on them. There are other reliefs which are claimed including a direction to defendant no.6 to execute and register a Deed of Conveyance in respect of property referred to above in favour of plaintiffs herein.

5. The plaintiffs have come with a grievance that it being a registered co-operative housing society of tenants/occupants of Sardar Gruha building, it alone is entitled to a conveyance being executed in its favour. According to the plaintiffs, first defendant is a company carrying on retail business. Second defendant is director of a company. However, defendant no.3 at one stage despite being Chief Promoter of the plaintiff society, has chosen not to become a member. The fourth defendant is also one of the office bearers of the plaintiffs. The fifth defendant is Ex-Chairman. Defendants 3, 4 and 5 have colluded with defendant no.1 and are trying to claim rights in respect of this property as co-owners along with plaintiffs.

6. It is contended that one Vijaylaxmi Gajanan Salvekar as an Administrator of the property and credits of late Gajanan Vishwanath Salvekar was the owner of the property. Thereafter, one M/s.Western Home Makers City Limited became landlords in respect of this property. It is contended that prior to August 2001 there were approximately 108 tenants/occupants in the building including defendants. Since landlords

failed to pay the cess, property tax as well as lease rentals to the BMC for a considerable length of time, the property (Exhibit-B) was auctioned.

7. It is at that stage that all tenants/ occupants came together and Mr.Dwarkadas contends that even defendants 1 to 5 agreed to become members of the co-operative housing society. A reference is made to the Memorandum of Understanding by both sides. Mr.Dwarkadas contends that the Memorandum of Understanding cannot be construed as conferring rights of co-ownership whereas Mr.Madon says that it in fact confers such rights. In the light of the pendency of suit, BMC has not issued conveyance in anybody's favour. Consequently, the tenants/ occupants do not know as to who is governing and administering the property.

8. Apart from the fact that serious dispute is raised about binding nature of the Memorandum of Understanding, the same read with the correspondence on record as also the contradictory stand taken by one of the defendants, makes it abundantly clear that rights of occupants as well as those enrolling

themselves as members of the plaintiff society need to be protected. For such rights to be protected, it is equally necessary that the subject matter of the litigation namely immovable property is also preserved, maintained and protected. Moreso, when it is contended that it is a heritage structure.

9. Present state of affairs are such that if the property is not custodia legis, collection of rent and payment of several dues would be adversely affected. A situation may once again arise when the property may have to be put up for sale for recovery of dues. To avoid all complications and with a view to see that occupants do not alienate, encumber the portions in their possession and to avoid wastage of the property, it is just and convenient that pending hearing and final disposal of this suit, the Court Receiver, High Court, Bombay is appointed Receiver of the property more particularly described at Exhibit-B. The Court Receiver shall place his board at an appropriate place on the property. Any open spaces or vacant portions to be guarded and sealed by him. This would not affect the ingress and outgress of occupants. The Court Receiver shall prepare an inventory of

the occupants and members. Such inventory should include all details pertaining to the nature of occupation, date of occupation, charges/compensation paid by the occupants and to whom the said are being paid till date. Further, the inventory shall include details as to transfer of occupancy or other rights till date. Such inventory shall be made after the plaintiffs as well as defendants 1 to 5 place all documents and records in possession of the Court Receiver. If the parties do not co-operate, the Court Receiver to seize the same. Needless to add that after all documents and records are taken custody of, the Court Receiver shall prepare the said inventory and submit a detailed report within a period of six weeks from the date thereof. After submission of the report to this Court and making available copies to the parties, it will be open for them to seek appropriate directions.

10. It is clarified that the Court Receiver will not dispossess the occupants but each of them shall pay all charges/ rents/out-goings to the Court Receiver. Parties shall forward all notices and demands raised from time to time to the Court Receiver.

11. It will not be open for any parties to accept any pleas for surrender or transfer of tenancy rights and they are hereby restrained from parting with possession, transferring, selling, assigning and in any manner creating third party rights in respect of rooms/premises in the building.

12. In my view, the aforesaid order and directions protect the rights of plaintiffs as well as defendants 1 to 5. This order shall not prejudice their respective rights and contentions in the suit. Needless to add that they would be free to apply for any clarification and/or further directions as and when circumstances so arise. Further, defendant no.6 is restrained from executing Conveyance Deed in respect of the property in question until further orders of this Court. Notice of Motion stands disposed off.

(S.C.DHARMADHIKARI, J.)